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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/895,027	06/29/2001	Olaf Iscle	8610	7458

27752 7590 01/25/2006

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INTELLECTUAL PROPERTY DIVISION  
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EXAMINER

CHANNAVAJALA, LAKSHMI SARADA

ART UNIT PAPER NUMBER

1615

DATE MAILED: 01/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/895,027

Applicant(s)

ISELE ET AL.

Examiner

Lakshmi S. Channavajjala

Art Unit

1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

Art Unit: 1615

### **DETAILED ACTION**

Receipt of amendment, remarks and declaration dated 10-31-05 is acknowledged.

Claims 1-21 are present in the instant application.

Upon further consideration, the previous rejection of record has been withdrawn and the instant claims are rejected as follows:

#### ***Claim Rejections - 35 USC § 102***

Claims 1-21 are rejected under 35 U.S.C. 102(a) as being anticipated by WO 00/64502 to Kryzsik et al.

WO discloses an absorbent article having a liquid impermeable outer surface, a middle absorbent portion and a top liquid permeable bodyside liner facing the wearer (see figure 2 of WO). WO discloses that the bodyside liner may be made of woven or nonwoven materials, less hydrophilic to be dry and porous (page 12, lines 15-32). The bodyside liner includes a lotion formulation on the outer bodyfacing surface and is comprised of wax, emollient and a viscosity enhancer that acts as a lubricant to reduce the abrasion of skin caused by liner. The emollient lubricates skin and upon transfer to the skin improved skin condition (abstract, page 13, lines 15-22) and includes fatty alcohols, lanolin or lanolin derivatives, petroleum based oils (page 13, lines 22-35). WO discloses waxes for immobilizing the emollient and reduce its tendency to migrate (page 14), viscosity enhancers such as talc, silica, cellulose and modified cellulose derivatives and other skin treating compounds such as glycerin, zinc oxide, etc (page 15 and 16).

With respect to the claimed thickness of the beneficial components on the porous substrate i.e., 2.2 times more in the top third portion (0 to Z/3) of the porous substrate

Art Unit: 1615

than the bottom 2/3 portions WO does not disclose the ratio. Thus, instant claims requires more beneficial component in the top 1/3 of the substrate, which includes the thickness of 0 i.e., on the top most part of the substrate. WO discloses that the lotion be applied to the bodyside liner at 0.05-100 mg/sq. cm, which in other words the top most side of the body side line and is within the claimed limitations. Further, instant claims require that the beneficial component with a first and second layer, wherein the composition of the first layer different from the first layer. Instant claims can be interpreted as two different layers of the active agent one on top of the other or one next to the other. WO discloses the layering of beneficial agent as stripes, which reads on the latter interpretation.

Further, WO states that a z-direction migration loss test shows that the migration of the lotion on the absorbent article is very low. Further, WO discloses applying the lotions to discreet areas as stripes as full length or a portion of the article and further in an add-on level, including the claimed steps of applying the component and solidifying (page 19). WO also discloses deposition of wax, emollients and other viscosity enhancers such as celluloses, silica, petrolatum, aloe etc., all of which read on instant hydrophilic components, along with emollients and wax (hydrophobic) in the lotion formulation. WO suggests that the lotion formulation be applied to the entire body face or may be applied selectively to particular sections, so as to provide greater lubricity to such sections and can be applied in stripes (page 18, lines 26-33) and suggests that the lotion formulation leave a greater percentage of the added formulation on the

Art Unit: 1615

bodyfacing surface of the liner where it can contact and transfer to the wearer's skin to provide a benefit (page 3, lines 1-7). Thus, WO anticipates the instant claims.

### ***Response to Arguments***

Applicant's arguments and the declaration of Olaf Isele filed 10-31-05 have been fully considered but they are not persuasive.

Applicants argue that examiner continues to apply the reference of WO to reject instant claims with providing factual support or a convincing line of reasoning for the expected result of minimum migration. Applicants argue that WO fails to show why or how WO teaches top biasing as required by the claims (the ratio of 2.2) because Kryzsis cannot determine the lotion concentration on or within the discrete thickness of the liner and cannot test the loss of lotion in a direction other than z direction. Applicants argue that as explained by the declaration of Isele, the z-directional migration loss of WO is not equivalent to top bias as it is measured is with respect to how much of the lotion moves away from the substrate and into the article rather than how much is moving away from the article to a point where it can be readily to the target surface. It is argued that the liner of WO can fail applicants' top biasing by not readily being transferred to the target surface. Further, applicants have not provided any evidence that the bottom 2/3 portion of the article of WO does not contain any lotion. It appears to the examiner that the claimed ration appears novel and the prior art meets the claimed ratio and finally any structural difference that differentiates the instant article from that of WO is not claimed.

Art Unit: 1615


In response to the above arguments regarding the claimed thickness of the beneficial component, WO clearly states that the lotion is placed on the body side liner and that the lotion has minimum migration and has improved transfer to the skin (abstract, page 5, lines 8-20) which is exactly what is achieved by the instant application, as also admitted by the above arguments presented by applicants. A careful review of the instant specification also reveals that the same end result i.e., minimizing the migration of lotion is achieved by the applicants by incorporating viscosity enhancing agents (page 18) and hydrophobic agents such as wax, both of which are taught by WO. WO states that the viscous or solid components of the lotion prevent their migration into the article and hence the claimed top biasing is inherent to the article of WO. Applicants have not shown any evidence in terms of any structural differences in the claimed article versus that of WO that results in a different lotion thickness and that distinguishes the claimed article from that of WO. Hence the office maintains the position that WO discloses top biasing.

Applicants argue that the reference relied fails to disclose a beneficial component comprising at least a first layer and a second layer, where the second layer is different from the first. Instant claims do not state that the layers are on one top of the other. Accordingly, assuming that the layers are next to each other, WO clearly discloses (see figures of WO) in stripes, having same or different lotion and hence reads on the claimed limitation.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lakshmi S. Channavajjala whose telephone number is 571-272-0591. The examiner can normally be reached on 9.00 AM -6.30 PM

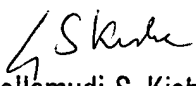
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K. Page can be reached on 571-272-0602. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Lakshmi S Channavajjala  
Examiner  
Art Unit 1615

June 23, 2005



Gollamudi S. Kishore, PhD  
Primary Examiner  
Group 1600